

Local Funds Exchange AGREEMENT

THIS LOCAL FUND EXCHANGE AGREEMENT ("AGREEMENT") is entered into this _____ day of _____, 2005 by and between the Alameda County Congestion Management Agency (hereinafter "CMA") and the ?? (hereinafter "SPONSOR").

RECITALS

A. WHEREAS, CMA has established a local Funds Exchange Program for the purpose of providing local funds to CMA for the use in projects that either do not have the ability to make use of state or federal funds or would face unacceptable delays and/or cost increases if state or federal funds were used directly.

B. WHEREAS, SPONSOR is planning to implement ?? (hereinafter "PROJECT") which are eligible for federal Surface Transportation Program/Congestion Mitigation and Air Quality Improvement Program (STP/CMAQ) funds. The total cost of the PROJECT is estimated to be \$??.

AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. CMA agrees to provide not more than \$?? (hereinafter "EXCHANGE AMOUNT") from STP/CMAQ funds not currently allocated to the PROJECT through the County recommendation for STP/CMAQ funds. CMA will program the EXCHANGE AMOUNT in STP/CMAQ funds for the PROJECT and SPONSOR will pay CMA the CMA RETURN as provided in this AGREEMENT.

2. SPONSOR agrees to pay CMA an amount determined by multiplying the EXCHANGE AMOUNT by ninety percent (90%), or \$?? (hereinafter "CMA RETURN"), in local funds. SPONSOR shall request reimbursements of project costs from Caltrans on a monthly basis. Not less than ten (10) days after receiving each such reimbursement from Caltrans, SPONSOR shall pay an equivalent amount to CMA from SPONSOR's local funds. SPONSOR shall initiate payment of the CMA RETURN to CMA no later than ??, 20??. SPONSOR shall pay the entire CMA RETURN to CMA on or before ??, 20??. If and to the extent SPONSOR is delayed or prevented from paying any portion of the CMA RETURN to CMA due to delays caused by Caltrans or other factors beyond the control of SPONSOR, SPONSOR shall not be deemed in default despite failure to comply with the above deadlines so long as SPONSOR proceeds with due diligence to overcome all such delays as quickly as possible. SPONSOR shall give CMA reasonable notice of any such delay.

3. SPONSOR has the responsibility of obtaining all necessary state and/ or federal approvals prior to initiating work on the Project.

4. If, after execution of this agreement, CMA is notified that the PROJECT's estimated cost has been reduced, then this Agreement shall be amended without further action by the parties to provide that (i) the EXCHANGE AMOUNT shall be reduced in such a manner that the EXCHANGE AMOUNT plus the other sources of funding for the PROJECT shall equal such estimated cost; and (ii) the CMA RETURN shall also be reduced accordingly pursuant to Section 2 above.

5. Neither CMA nor any officer, board member or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by SPONSOR in connection with this AGREEMENT. It is also agreed that SPONSOR shall fully indemnify and hold CMA and its officers, board members and employees harmless from any liability imposed for injury or loss occurring by reason of anything done or omitted to be done by SPONSOR in connection with this AGREEMENT and/ or any claim related to or arising out of the construction of the PROJECT.

6. Neither SPONSOR nor any officer, board member or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CMA in connection with this AGREEMENT. It is also agreed that CMA shall fully indemnify and hold SPONSOR and its officers, board members and employees harmless from any liability imposed for injury or loss occurring by reason of anything done or omitted to be done by CMA in connection with this AGREEMENT. Notwithstanding the above, it is expressly agreed that CMA will not be liable to SPONSOR for any loss of funds, any actions or failure of CTC or of Caltrans or for anything related to the PROJECT.

7. Should a lawsuit, action or proceeding be instituted regarding the enforcement and interpretation of any of the terms of this AGREEMENT or any matter arising out of or related to this AGREEMENT, the prevailing party shall be entitled to, in addition to any damages awarded, its reasonable attorney's fees and all costs of the lawsuit, action or proceeding.

8. This AGREEMENT may not be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party, except as set forth in this AGREEMENT. This AGREEMENT shall be binding upon any successors or assigns of the parties hereto.

9. This AGREEMENT may be amended only by written AGREEMENT executed by all of the parties hereto. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing signed by both parties and no oral understanding or AGREEMENT not incorporated herein shall be binding on either of the parties hereto.

10. This AGREEMENT shall be interpreted under and governed by the laws of the State of California.

11. This AGREEMENT shall terminate upon full repayment by SPONSOR of the CMA RETURN in local funds to CMA. However, sections 6 and 7 of this AGREEMENT shall survive the termination of this AGREEMENT until terminated or modified in writing by mutual AGREEMENT.

12. This AGREEMENT constitutes the entire AGREEMENT between the parties hereto relating to the project and supersedes any previous AGREEMENT or understanding.

13. This AGREEMENT may be modified upon the approval of both parties to address required changes as they may arise from time to time. Such modifications shall only be effective if they are in writing and signed by both parties.

CMA:

Alameda County Congestion
Management Agency

SPONSOR:

Sponsor Name

By: _____

By: _____

Recommend for Approval:

Attest:

Approved As to Form and Legality:

Approved As to Form:

Wendel Rosen, Black & Dean, LLP
CMA General Council

Attorney

Attest: